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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 376

THOMAS O'DONNELL AND MARY O'DONNELL,
Petitioners,

vs.

CHICAGO LAND CLEARANCE COMMISSION,
A MUNICIPAL CORPORATION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

BRIEF FOR THE CHICAGO LAND CLEARANCE COMMISSION IN OPPOSITION.

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THE DONNELLEY-GARBER PRINTING COMPANY, CHICAGO

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STATUTE INVOLVED.

The pertinent provisions of Sections 13 and 14 of the Blighted Areas Redevelopment Act of 1947, as amended in 1949 (being pars. 75 and 76 of Chapter 67½ of the Illinois Revised Statutes, 1953) are set forth in the Appendix, *infra*, pages 11-12.

STATEMENT OF THE CASE.

The facts shown by the record and as stated by the Supreme Court of Illinois (Pet. 1a-5a) may be summarized as follows:

This was a proceeding to acquire an area embracing ap-

proximately 40 acres of land consisting of 264 lots (Addl. R. 6, 8) including a vacant lot of the Petitioners located in a blighted vacant area for resale and development pursuant to the Blighted Areas Redevelopment Act of 1947 as amended in 1949 (Ill. Rev. Stat. 1953, Chap. 67½, pars. 63-91); hereinafter referred to as the "Act".

The Chicago Land Clearance Commission (hereinafter referred to as "Commission") by Resolution (Addl. R. 2-4) on July 26, 1950 found and determined that "the area consists of predominantly open platted urban land, which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or taxes or special assessment delinquencies exceeding the fair value of the land, substantially impairs or arrests the sound growth of the community and which is to be developed for predominantly residential uses" (Addl. R. 3) and that the area should be acquired pursuant to the provisions of the Act and that it be designated as "Blighted Vacant Area Redevelopment Project Number 2." (Addl. R. 4.)

Section 13 of the Act (Ill. Rev. Stat. 1953, Chap. 67½, par. 75) provides that "No such determination shall be of any force or effect until such time as it has been approved by the State Housing Board and the governing body of the Municipality in which the area is situated."

Section 14 of the Act (Ill. Rev. Stat. 1953, Chap. 67½, par. 76) provides "that land embraced within a 'Blighted Vacant Area Redevelopment Project' shall not be acquired by a land clearance commission through the exercise of the right of eminent domain unless an eligible purchaser * * * has first presented a plan for the development * * * of such property * * * which plan has been approved by the Land Clearance Commission, the State Housing Board and the governing body of the Municipality in which the real property is situated."

A redevelopment plan was presented to the Commission and it approved the same on June 11, 1951 (R. 30, 31). The determination of July 26, 1950 and the redevelopment plan were approved on July 11, 1951 by the State Housing Board (R. 31, Addl. R. 35, 36), and by the City Council of the City of Chicago (R. 20, Addl. R. 1, 2).

Within two months after the approvals, namely, on September 19, 1951, a *quo warranto* action was filed, challenging the Commission's power to proceed under the Act (R. 20). It was claimed that the Act was unconstitutional in several respects. A final determination was not reached until March 23, 1953, when the Supreme Court of Illinois sustained the Act (*People ex rel. Gutknecht* v. *City of Chicago,* 414 Ill. 600). That case involved the very same area which is the subject matter of the instant case (R. 20, 21).

Until March 23, 1953, the Commission could have done no more than it did. It then became necessary, because of withdrawal of the original development plan (R. 24) to obtain from another eligible purchaser a desirable redevelopment plan and to get its approval by the State Housing Board and by the City Council of the City of Chicago prior to instituting eminent domain proceedings. This was required because Section 14 of the Act provided that property in a blighted vacant area could not be acquired by eminent domain until such time as there was an approved development plan. The Commission approved the substituted plan of redevelopment on September 8, 1954 (R. 31) and it was approved by the City Council of the City of Chicago on November 4, 1954 (R. 31) and by the State Housing Board on November 17, 1954 (R. 31). The Commission filed its Petition to Condemn on June 7, 1955 in the Circuit Court of Cook County (R. 1). Petitioners filed a Traverse challenging the right of the Commission to acquire Petitioners' lot (R. 2).

The cause came on to be heard before the Court upon the

Traverse. At this trial the Commission introduced in evidence *inter alia* (a) the Resolution adopted by the Commission on July 26, 1950, together with the analysis and recommendations of the Planning Division of the Commission attached thereto (Pet. Ex. 8, R. 18; Addl. R. 2-32); (b) the Resolution of the Commission approving the redevelopment plan (R. 30, 31); (c) the Ordinance of the City Council of the City of Chicago adopted July 11, 1951, approving the determination of the Commission and the redevelopment plan (Pet. Ex. 9, R. 19; Addl. R. 1, 2); (d) the Resolution of the State Housing Board adopted July 11, 1951 approving the determination of the Commission and the redevelopment plan (Addl. R. 35, 36); (e) the Resolution of the Commission of September 8, 1954, approving the Amended Redevelopment Plan (Pet. Ex. 11, R. 31); (f) the Ordinance of the City of Chicago of November 4, 1954 (Pet. Ex. 12, R. 31) and the Resolution of the State Housing Board of November 17, 1954 (Pet. Ex. 13, R. 31) approving that plan.

The Petitioners did not introduce a scintilla of evidence to contradict the findings made in the Resolutions of the Commission, the State Housing Board and the Ordinance of the City of Chicago. Petitioners did show however, over the objections of the Commission, that at a time subsequent to the determination by the Commission there was a change in the matter of tax delinquencies. But Petitioners offered no evidence as to the value of the area or as to the total amount of delinquent taxes, special assessments, penalties and interest. The matter of tax delinquency was only one of the several factors included in the determination. No evidence at all was offered by Petitioners to challenge the other factors.

The trial court denied and overruled the Traverse.

Upon Appeal, the Supreme Court of Illinois held that the introduction in evidence by the Commission of the

Resolutions and Ordinances showing the determination by the Commission and its approval by the City Council of Chicago and by the State Housing Board that the area impairs or arrests the sound growth of the community, "because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or taxes or special assessment delinquencies exceeding the fair value of the land * * *" established *prima facie* the authority of the Commission to acquire the land by eminent domain (Pet. 2a).

The Supreme Court of Illinois found that Petitioners have not sustained their argument that the Commission's determination of July 26, 1950 could not reasonably support a petition for condemnation filed in June 1955 (Pet. 3a, 4a).

ARGUMENT.

There is no denial of due process in this case and no Federal question is involved. Petitioners were permitted to and did file a Traverse in the condemnation proceeding challenging the right of the Commission to acquire their property under the Blighted Areas Redevelopment Act of 1947, as amended in 1949. They were afforded a hearing upon the trial of the issues raised and were given full opportunity to introduce their evidence upon the subject. They took their appeal to the Supreme Court of Illinois and upon the presentation of the case to that Court, it properly affirmed the judgment.

Petitioners' contention (Pet. 8, 9) that in the opinion in the *Gutknecht* case, 414 Ill. 600, the Supreme Court did not determine the question as to whether or not the terms "obsolete platting" and "diversity of ownership" set up proper standards and their argument thereon is entirely without merit. In the *Gutknecht* case, 414 Ill. at pages 614-615, the Supreme Court stated, in part, as follows:

> "Attacking the Amendatory Act as an unlawful delegation of legislative power to the Commission, plaintiff contends that discretionary power is vested in the Commission without adequate standards because the terms 'predominantly open,' 'obsolete platting,' 'diversity of ownership,' and 'fair value,' used in subsection (1) of section 3 of the statute are not defined. What the Commission is to determine under the statute is whether or not the particular vacant area under consideration substantially impairs or arrests the sound growth of the community. Such a finding is required to be based upon subsidiary findings that the area has become unmarketable because platting is obsolete, site improvements have deteriorated, ownership is diversified, or tax delinquencies equal or exceed the fair value of the land.

"The Federal Housing Act of 1949 (42 U. S. C. A., par. 1460), which provides for the making of loans or grants by the Administrator of the Housing and Home Finance Agency to local public agencies to enable them to make land in project areas available for redevelopment, defines a project in part as follows: '(iii) land which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvement, or otherwise substantially impairs or arrests the sound growth of the community * * *.' It will be noted that this language is almost identical with that of section 3 (1) of the Amendatory Act and contains three of the four expressions to which plaintiff so strenuously objects.

"The testimony of numerous witnesses in this case shows that the four challenged terms have a recognized meaning to persons familiar with the basic problem which Congress, the General Assembly, and the city council have all recognized as a matter of serious public concern. Use of words which are commonly understood, when taken in connection with the context, does not render a statute invalid. (*People ex rel. Kerner* v. *Huls*, 355 Ill. 412.) A statute satisfies the requirement of certainty if the words and phrases employed have a technical or other special meaning sufficiently well known to enable those within their reach to apply them. *Hygrade Provision Co.* v. *Sherman*, 266 U. S. 497; *Omaechevarria* v. *Idaho;* 246 U. S. 343; *People* v. *Mueller*, 352 Ill. 124; *Amberson* v. *Amberson*, 349 Ill. 249; *Kowalczyk* v. *Swift & Co.*, 329 Ill. 308."

The Supreme Court of Illinois properly decided that Petitioners' contention that the Act is unconstitutional in that it fails to define the term "blighted vacant area" with sufficient precision has been disposed of by its decision in *People ex rel. Gutknecht* v. *City of Chicago*, 414 Ill. 600 (Pet. 2a).

The Supreme Court of Illinois found upon consideration of the evidence that the Commission had determined

the area to be a blighted vacant area within the meaning of the Act and that its determination had been approved by the City Council and by the State Housing Board. Its ruling that the documents offered by the commission and received in evidence established *prima facie*, the authority of the Commission to acquire the land by eminent domain was entirely correct and certainly did not deny the Petitioners due process of law. They were afforded full opportunity to introduce evidence on the subject. But petitioners failed to show that the area was not a blighted vacant area. Their failure to sustain their argument presents no question of due process of law.

The finding of the Supreme Court of Illinois that the Commission had determined that taxes or special assessment delinquencies exceeded the fair value of the land is certainly supported by the evidence in this case. Its further holding that the matter of taxes or special assessment delinquencies is not an essential factor is entirely correct for as the Court stated, "The question for the Commission to determine is whether the area is one that impairs or arrests the sound development of the community by reason of certain enumerated conditions, stated disjunctively. Tax delinquency is only one of these conditions" (Pet. 3a).

The contentions of Petitioners that the Commission had not filed the Petition to Condemn within a reasonable time after its determination and that because of lapse of time it became obsolete, involve nothing more than questions of fact, and the Supreme Court of Illinois upon consideration of the evidence in this case properly held that while the period that elapsed was long it was not unreasonable under the circumstances and that Petitioners have not sustained their argument that the Commission's determination of July 26, 1950 could not reasonably support a petition for condemnation filed in June, 1955.

Petitioners' contention that the refusal of the Supreme Court of Illinois to discuss the issues raised by their "Comment on the Redevelopment Plan" because the plans were not abstracted, amounted to a denial of due process is without merit. The Supreme Court of Illinois has repeatedly held the Court will not search the record to supply deficiencies in the abstract and that everything necessary to decide the questions raised on the appeal must appear in the abstract. *Department of Finance* v. *Sheldon*, 381 Ill. 256, 257 and cases therein cited. Certainly no constitutional or federal question is involved in a matter of State Court procedure (*Yazoo & M. V. R. Co.* v. *Adams*, 180 U. S. 1, 9; *Iowa Central R. Co.* v. *State of Iowa*, 160 U. S. 389, 393-394; *Simon* v. *Craft*, 182 U. S. 427, 437; *Jordan* v. *Massachusetts*, 225 U. S. 167, 174). Furthermore, Petitioners' "Comments on the Redevelopment Plan" amount to nothing more than their criticism of certain aspects of the redevelopment plan. Petitioners did not question the fact that there was an approved redevelopment plan for predominantly residential use. They merely objected to some of the details thereof. Under the Act, the legislature has seen fit to delegate to the Commission, the City Council and the State Housing Board, the duty of approving the plan of development. This Court in *Berman* v. *Parker*, 348 U. S. 26, 35-36 stated, in part, as follows:

> "It is not for the courts to oversee the choice of the boundary line nor to sit in review on the size of a particular project area. Once the question of the public purpose has been decided, the amount and character of land to be taken for the project and the need for a particular tract to complete the integrated plan rests in the discretion of the legislative branch."

There is nothing in the decision of the Supreme Court of Illinois which would warrant a review. Petitioners present no federal or constitutional question and it is re-

spectfully submitted, as this Court has stated, that the granting of the writ is not warranted merely to determine questions of fact or merely to review the evidence. *Southern Power Co.* v. *North Carolina Public Service Co.*, 263 U. S. 508, 509; *General Talking Pictures Corp.* v. *Western Electric Co.*, 304 U. S. 175, 178; *Rice* v. *Sioux City Cemetery*, 349 U. S. 70, 73-74.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

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APPENDIX.

In addition to the part of Sec. 65(L) of Chap. 67½ of Ill. Rev. Stat. set forth by Petitioner (Pet. 3-4) which is part of Section 3(L) of the Blighted Areas Redevelopment Act of 1947, as amended in 1949, Sections 13 and 14 of said Act (Ill. Rev. Stat. 1953, Chap. 67½, pars. 75-76) provide in pertinent part, as follows:

"75. Determination that particular blighted area should be acquired—Approval by State Housing Board and governing body.] §13. Whenever a Commission determines that a particular slum or blighted area, or any other area which may constitute a redevelopment project, as herein defined, should be acquired pursuant to the provisions of this Act, such determination together with an accurate description of the area included in such determination and the date on which the determination was made shall be immediately set forth in the records of the Commission. Such determinations by a Commission may be made from time to time and need not all be made at one time. Each such determination shall be evidenced by a resolution adopted by the Land Clearance Commission.

"The area of each such determination shall be specifically designated in the resolution as a 'Slum and Blighted Area Redevelopment Project' or a 'Blighted Vacant Area Redevelopment Project', according to the determination of the Commission; * * *. No such determination shall be of any force or effect until such time as it has been approved by the State Housing Board and the governing body of the municipality in which the area is situated. As amended by act approved Aug. 3, 1949. L. 1949, p. 997."

"76. Acquisition of real property—Condemnation proceedings.] §14. Upon approval of the determination as provided in the preceding Section, the Land

Clearance Commission may proceed to acquire by gift, purchase or condemnation the fee simple title to all real property lying within the area included in the redevelopment project, including easements and reversionary interests in the streets, alleys and other public places lying within such area; provided, however, that land embraced within a 'Blighted Vacant Area Redevelopment Project' shall not be acquired by a land clearance commission through the exercise of the right of eminent domain unless an eligible purchaser as described in Section 19 of this Act has first presented a plan for the development or redevelopment of such property for predominantly residential uses, which plan has been approved by the land clearance commission, the State Housing Board and the governing body of the municipality in which the real property is situated * * *."